

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12  
13 GLENN EDWIN CLAY,  
14 Plaintiff,  
15 v.  
16 Carolyn W. Colvin, Acting  
17 Commissioner of Social Security,  
18 Defendant.  
19  
20

Case No. 14-cv-02893-BAS(BLM)  
**ORDER DENYING JOINT  
MOTION FOR THE COURT TO  
SET THE TIME FOR  
DEFENDANT'S ANSWER TO  
PLAINTIFF'S AMENDED  
COMPLAINT**  
**[ECF No. 20]**

21 Presently before the Court is a joint motion to set the time for Defendant to  
22 respond to Plaintiff's First Amended Complaint. (ECF No. 20.) Following the  
23 Court's Order reopening this case, Plaintiff served his original Complaint on  
24 Defendant on April 1, 2016. (ECF No. 20 at 2:7–9.) Plaintiff subsequently retained  
25 counsel and filed a First Amended Complaint on May 11, 2016. (ECF No. 17.)  
26 Because Plaintiff amended his pleading more than twenty-one days after his initial  
27 Complaint was filed and did so without "Defendant's written consent or the Court's  
28 leave," the parties submit that Plaintiff's First Amended Complaint is untimely. They

1 request that the Court nevertheless allow the parties to proceed by setting June 3,  
2 2016, as the deadline for Defendant to respond to Plaintiff's amended pleading.

3 Federal Rule of Civil Procedure 15 governs amendments to pleadings. Prior to  
4 trial, there are two types of amendments: (i) amendments made as a matter of course  
5 and (ii) other amendments. Fed. R. Civ. P. 15(a)(1)–(2). Rule 15 defines the first  
6 category of amendments as follows:

7 (1) ***Amending as a Matter of Course.*** A party may amend its pleading  
8 once as a matter of course within:

9 (A) 21 days after serving it, or

10 (B) If the pleading is one to which a responsive pleading is  
11 required, 21 days after service of a responsive pleading or 21 days  
12 after service of a motion under Rule 12(b), (e), or (f), whichever  
13 is earlier.

14 *Id.* Unlike other amendments, amendments made as a matter of course do not require  
15 “the opposing party’s written consent or the court’s leave.” *Id.*

16 Here, Plaintiff’s First Amended Complaint is a type of pleading “to which a  
17 responsive pleading is required.” *See* Fed. R. Civ. P. 15(a)(1)(B). Consequently,  
18 Plaintiff had the right to amend his pleading “once as a matter of course within . . .  
19 21 days after service of a responsive pleading or 21 days after service of a motion  
20 under Rule 12(b), (e), or (f), whichever is earlier.” *See id.*; *see also Villery v. District*  
21 *of Colombia*, 277 F.R.D. 218, 219 (D.D.C. 2011) (“Therefore, under Rule  
22 15(a)(1)(B), a party has an absolute right to amend its complaint at any time from the  
23 moment the complaint is filed until 21 days after the earlier of the filing of a  
24 responsive pleading or a motion under Rule 12(b), (e), or (f).”). Because no  
25 responsive pleading or applicable Rule 12 motion had been filed in the reopened case  
26 prior to Plaintiff’s amendment, the twenty-one day period for Plaintiff to amend his  
27 pleading had not yet started to accrue. Thus, Plaintiff’s First Amended Complaint is  
28 timely, and there is not good cause to grant the parties’ joint motion.


//

//

1 Based on the foregoing, the Court **DENIES** the parties' joint motion to set the  
2 time for Defendant to respond to Plaintiff's First Amended Complaint. Defendant  
3 may respond to this pleading in accordance with the Federal Rules of Civil Procedure.

4 **IT IS SO ORDERED.**

5  
6 **DATED: May 27, 2016**

7   
8 **Hon. Cynthia Bashant**  
9 **United States District Judge**